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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,255	06/23/2000	Grover John Manderfield JR.	P00.0677	1215
26263	7590	06/25/2004		
SONNENSCHN NATH & ROSENTHAL LLP P.O. BOX 061080 WACKER DRIVE STATION, SEARS TOWER CHICAGO, IL 60606-1080				
			EXAMINER ELOSHWAY, NIKI MARINA	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/603,255

Applicant(s)

MANDERFIELD ET AL.

Examiner

Niki M. Eloshway

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 11-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 3.
2. Applicant's election without traverse of Group I, the container, in Paper No. 3 is acknowledged.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi (U.S. 4,040,233) in view of Nosella (D 438,116). Valyi teaches a container shown in figure 5 having a continuous curve sidewall with lower and upper frustum sections and a mid-section. The container resists permanent deformation when used in a retort process. Valyi does not teach that the lower section has a greater volume than the upper section. Nosella teaches that it is known to provide a container with a lower frustum section having a larger volume than the upper frustum section (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Valyi with the lower frustum section having a larger volume than the upper frustum section, as taught by Nosella, in order to give the container a more stable base.

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5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi in view of Nosella, as applied to 1 above, and further in view of Fortuna (U.S. D279,550). The modified container of Valyi discloses the claimed invention except for the container having a diameter greater than the height. Fortuna teaches that it is known to provide a container with a diameter greater than the height. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Valyi with an increased diameter, as taught by Fortuna, in order to increase the capacity of the container and provide the container with increased stability and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi in view of Nosella, as applied to claim 1 above, and further in view of Edwards (U.S. D270,814). The modified container of Valyi discloses the claimed invention except for the standing ridge. Edwards teaches that it is known to provide a container standing ridge (see figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Valyi with a standing ridge, as taught by Edwards, in order to allow the container to be supported more stably on a flat surface and in order to increase the strength of the base.

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi (U.S. 4,040,233) in view of Nosella (D 438,116) and Fortuna (U.S. D279,550). Valyi teaches a container shown in figure 5 having a continuous curve sidewall with lower and upper frustum sections and a mid-section. The container resists permanent deformation when used in a retort process. Valyi does not teach that the lower section has a greater volume than the upper section nor does it teach that the container has a diameter greater than the height. Nosella teaches that it is known to provide a container with a lower frustum section having a larger volume than the upper frustum section (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

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container of Valyi with the lower frustum section having a larger volume than the upper frustum section, as taught by Nosella, in order to give the container a more stable base.

Fortuna teaches that it is known to provide a container with a diameter greater than the height. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Valyi with an increased diameter, as taught by Fortuna, in order to increase the capacity of the container and provide the container with increased stability and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

#### ***Response to Arguments***

8. Applicant's arguments filed April 22, 2003, with respect to the claim limitation that the lower frustum section has a larger volume than the upper frustum section, have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment filed October 14, 2003.

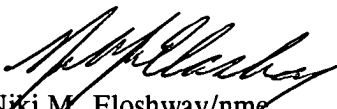
9. Applicant argues that the container of Valyi cannot be considered a bowl. The examiner disagrees with this position. During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. (*In re Morris*, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997), and *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)) The term bowl is not limited to containers with neck portions which do not narrow at all. The term "bowl" is defined in Webster's New World Dictionary, Third College Edition, 1988, as "a deep, rounded container or dish, open at the top". The broadest reasonable interpretation of the term "bowl" encompasses containers with a narrowing of the neck portion. For this reason, the container of Valyi may considered a bowl, to the degree set forth in the claims.

*Conclusion*

10. THIS ACTION IS MADE NON-FINAL.

11. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.

  
Niki M. Eloshway/nme  
Patent Examiner  
June 18, 2004